NO. 87 - 473

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1987

GENINA MARINE SERVICES, INC.

Petitioner,

versus

MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC.

Respondent

## OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA COURT OF APPEAL, FIRST CIRCUIT

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NOW INTO COURT, through undersigned counsel, comes MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC., respondent herein, who respectfully urge this Honorable Court to deny the writ of certiorari petitioned for by Genina Marine Services, Inc. on the grounds that plaintiff's application for writs does not meet the requirements of Rule 17 of the Supreme Court Rules, and that neither the decisions of the 16th Judicial District Court for the Parish of St. Mary, State of Louisiana, or the Louisiana Court of Appeal, First Circuit, are in conflict with the decision of the United States Bankruptcy Court for the Western District of Louisiana.

## STATEMENT OF THE CASE

This is a lawsuit filed by Genina Marine Services, Inc., hereinafter referred to as "Genina" against Mobil Oil Exploration & Producing Southeast, Inc., hereinafter referred to as "Mobil", seeking a money judgment in the total amount of $55,593.78, and the recognition of four (4) liens which were filed under the Louisiana Well Lien Act, R.S. 9:4861, et seq.

In it's answer filed in response to plaintiff's original petition, Mobil admitted that plaintiff's vessels were used by Mobil during the time and at the location set forth in the liens. However, it was Mobil's position that Briley Marine Service, Inc. (hereinafter referred to as Briley) was the managing agent for Genina for the offshore vessels whose services have become the subject of this litigation, and the agent, Briley, was paid in full by Mobil for these services. When Briley, Genina's agent, filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code, Genina filed suit against the trustee in bankruptcy to recover funds which were held by Briley on the grounds that Briley was the agent for Genina, and the funds had been received in it's capacity as agent. The judgment of the Bankruptcy Court, rendered November 18, 1983, held that although an agency relationship between Briley and Genina originally existed, "various oral modifications were subsequently made and acted upon by the parties in such a manner that a new agreement came into existence. The new agreement created a creditor-debtor relationship between the parties." Accordingly, the trustee was allowed to retain title and possession of all funds sought by Genina.

In the district court, it was the position of Genina that Briley was not the agent of Genina, and that payment to Briley was not payment to Genina; and that the decision of the Bankruptcy Court, even though Mobil was not a party,

nor even aware of these proceedings, was res judicata and binding on the district court.

This matter was tried in the 16th Judicial District Court for the Parish of St. Mary, State of Louisiana, on April 29, 1985. On October 23, 1985 judgment was rendered in favor of Mobil, dismissing Genina's demands with prejudice.

This matter was appealed by Genina to the First Circuit Court of Appeal, State of Louisiana; was argued on February 25, 1987, and on April 14, 1987 the First Circuit Court of Appeal affirmed the holding of the district court. Genina immediately applied for a writ of certiorari and/or review with the Supreme Court for the State of Louisiana. On June 12, 1987 Genina's application for writs was denied.

## ARGUMENT

The application for writs herein should be denied for two basic and clear reasons. First, this application does not meet the requirements of Rule 17 of this Honorable Court. This is not a situation where a Federal Court of Appeal has rendered a decision in conflict with the decision of another Federal Court of Appeal, or a situation where a state court of last resort has decided a federal question in a way to conflict with the decision of another state court, or of a Federal Court of Appeal. Likewise, this is not a situation where a State Court or a Federal Court of Appeal has decided an important question of federal law which has not been settled by this court. At best, we have a decision of a State District Court affirmed by a State Court of Appeal, which is allegedly in conflict with the holding of a U.S. District Bankruptcy Court. Although Genina was presumably aggrieved by the decision of the Bankruptcy Court, no appeal was taken and the holding of the Bankruptcy never became the holding, by affirmation, of a Federal Court of Appeal. Accordingly, the requirements of Rule 17 can not be met herein.

As stated above, it is the position of Mobil that there is not conflict whatsoever in the holding of the Bankruptcy Court and the Louisiana courts. The Bankruptcy Court held that "although the original written contracts between the parties dated October 24, 1978 may have been intended to be that of an agency-contractor only, it is clear to the court that various modifications were subsequently made and acted upon by the parties in such a manner that a new agreement came into existence. The new agreement, whereby the plaintiff would extend credit for the use of it's vessels to the defendant created a creditor-debtor relationship between the parties."

In reviewing the Reasons for Judgment, rendered by the State District Court, the court stated, to-wit:

> In the bankruptcy action, Genina contended the monies paid by Mobil to Briley were not assets of Briley but belonged to Genina since Briley was its agent. The Bankruptcy Court found, that while the original relationship between Briley and Genina was that of an agent and principal, certain oral modifications changed the relationship to that of debtor-creditor. Under this finding, the Bankruptcy Court held that the monies paid by Mobil were assets of Briley and subject to control by the Bankruptcy Court.
>
> These facts are all undisputed. The contested issue that must be resolved is whether or not Mobil has met its burden of proving its affirmative defense of payment.
>
> Mobil's position is that Genina 'clothed' Briley with apparant authority. Genina

contends that the Bankruptcy Court's finding that Briley was not Genina's agent is conclusive.

It should be noted here that the Bankruptcy Court did *not* decide its case with Mobil Oil as a party. It's decision rested solely on bankruptcy law and its appreciation of Louisiana's substantive law relating to modification of a written agreement. It did not discuss whether or not Mobil Oil believed Briley was Genina's agent nor if this issue is of central importance to this Court.

Mobil advances two possible basis for agency between Briley and Genina. First, express agency-where the third party dealing with an agent is aware of the agreement between the principal and the agent. Secondly, apparently authority-where the third party is led to believe that an agency relationship exists due to some action on the part of the principal to 'clothe' the apparent agent with authority. It is clear from reading the Bankruptcy Court's Judgment that these issues were never addressed. The Bankruptcy Court's judgment is based solely on its appreciation of the terms of the written agreement between Briley and Genina, not the effect such modifications would have on third persons. There is no evidence that Mobil Oil ever knew about the subsequent oral modifications upon which the Bankruptcy Court based its judgment."

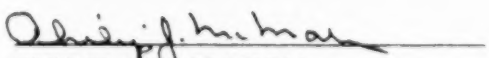
The First Circuit Court of Appeal, in affirming the lower State District Court's decision, stated, to-wit:

> "The 'Management Agreement' entered into between Genina and Briley, evidenced by the written instrument dated October 24, 1978, created an actual agency. The record supports this conclusion. Whether oral modifications of the management agreement changed the relationship of Genina and Briley from that of principal-agent to creditor-debtor is *IMMATERIAL* insofar as MOEPSI (Mobil) is concerned. The record supports MOEPSI's contention that its dealing with Briley, combined with several face-to-face conversations between the owners of Genina and MOEPSI's personnel concerning increased rental for the use of Genina's vessels being managed or hired out by Briley to MOEPSI, were conducted in good faith and on the basis of a reasonable reliance that Briley had Genina's authority to continue managing its boats. MOEPSI was never made aware of any oral modifications of the 'Management Agreement', did not have its suspicions aroused that oral modifications may have taken place which might have detracted from Briley's previously conferred express authority, and was never requested by Genina to alter its mehtod of paying for the use of the boats (including, but not limited to, issuing its checks made payable to Genina and Briley jointly), or any other disclosure which would have alerted MOEPSI that something was amiss." (emphasis added)

Accordingly, the decision by the First Circuit Court of Appeal did not differ or contradict the holding of the U.S. Bankruptcy Court. That the relationship which existed between Briley and Genina was that of creditor-debtor and not of principal-agent. As stated by the court, this fact or holding was *IMMATERIAL* as far as Mobil was concerned. The court based its decision on the fact that Mobil was never made aware of any modifications, nor was it informed of these modifications by Genina, or requested by Genina to alter its payment method to include Genina on all checks. It is respectfully submitted that there is no conflict between the decision of the U.S. Bankruptcy Court and the appropriate state courts herein.

## CONCLUSION

The decision of the U.S. Bankruptcy Court dealt with the relationship which existed between Briley and Genina, and how this relationship was changed by oral modifications. The decision of the Louisiana District Court and Court of Appeal dealt with the effect these oral modifications would have on a third party, Mobil, who was always unaware of the modifications would have on a third party, Mobil, who was always unaware of the modifications, and who had no reason to expect that modifications had occurred. Clearly, these decisions dealt with different matters, and accordingly, are not in conflict. For this reason, it is respectfully prayed that the application for writs filed by Genina Marine Services, Inc. be denied.



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